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Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SANDRA TOMA and K.J.M. by and)	CIVIL NO. _____
through her Next Friend Deidre Mata)	
)	(FTCA)
Plaintiffs,)	
)	
VS.)	COMPLAINT
)	
LANDEN DELLA CRUZ;)	
DEPARTMENT of the ARMY,)	
UNITED STATES of AMERICA)	
JOHN 1-10; JANE DOES 1-10;DOE)	
CORPORATIONS 1-10; DOE)	
PARTNERSHIPS 1-10; and)	
DOE GOVERNMENTAL)	
ENTITIES 1-10,)	
)	
Defendants.)	
_____)	

COMPLAINT

Come now Plaintiff, SANDRA TOMA, and K.J.M., by and through her Next Friend Deidre Mata, and through their attorney, ARNOLD T. PHILLIPS, and brings this complaint against Defendants above-named, and in doing so, allege and aver as follows:

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction of the Plaintiffs' Federal Tort Claims Act claims under 28 U.S.C. § 1331 and § 1346(b).

2. The Court has personal jurisdiction over the United States of America.

3. Venue is proper in the District of Hawaii pursuant to 28 U.S.C. § 1391 (e) and § 1402(b) because the events which give rise to this action occurred within this district and Plaintiffs reside within this district.

PARTIES

4. Plaintiff SANDRA TOMA, is and was at all relevant times herein a resident of the City and County of Honolulu, State of Hawaii.

5. Plaintiff K.J.M., is a minor and granddaughter of Sandra Toma and is proceeding, by and through her Next Friend and mother Deidre Mata. She is and was at all relevant times herein a resident of the City and County of Honolulu, State of Hawaii.

3. Defendant LANDEN DELLA CRUZ is a Staff Sargent in the Hawaii Army National Guard in the Department of the Army, was engaged in official duties acting within the course and scope of his official duties at the time of the occurrences described in this complaint on July 26, 2016.

4. Defendants JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, DOE NON-PROFIT ENTITIES 1-10, and DOE GOVERNMENTAL ENTITIES 1-10, (collectively referred to as "Doe Defendants") are persons, corporations, partnerships, business entities, non-profit entities, and/or governmental entities who acted in a negligent, wrongful or tortious manner which proximately caused or contributed to injuries and damages sustained by Plaintiffs. Plaintiffs have been unable to ascertain the names and identities of the above-named Doe Defendants from the investigation that has been conducted to date. Accordingly,

Plaintiffs have sued the unidentified Doe

4. Defendants herein under fictitious names and Plaintiffs will substitute the true names, identities, capacities, acts and/or admissions of the Doe Defendants when the same are ascertained.

FACTUAL ALLEGATIONS

6. On November 30, 2016, Ms. Toma and K.J.M., a minor, through her mother Derida Mata mailed an administrative claim under the Federal Tort Claims Act, comprised of Standard Form 95 and supporting materials to the appropriate federal agencies including the Department of the Army, HQ 25th ID & USARHAW. Because the earliest tortious described in the administrative claim occurred on July 26, 2016 the Plaintiffs' claims were timely filed.

7. In a letter dated August 30, 2017, the Department of the Army though the Chief of the Tort Claim Division demined the Plaintiffs' administrative claims. This action under the FTCA is timely. See 28 U.S.C.A. §2401(b) (six month statute of limitation for filing of action after denial of administrative tort claim).

COUNT I - NEGLIGENCE

8. On or about July 26, 2016, Defendant LANDEN DELLA CRUZ at approximately 2:45 pm operated a motor vehicle in a negligent and careless manner so as to strike the Plaintiffs in a collision while they was walking as pedestrians on Waialae Avenue and Hunakai Streets, injuring each of the pedestrians. Defendant LANDEN DELLA CRUZ was driving a 2014 Honda Odyssey model with Hawaii state license plates SCX 725. The police report of the incident states that the employer, company

name, and work telephone number were unknown. The plaintiffs were injured and taken to the hospital for treatment. This collision occurred in the City and County of Honolulu, State of Hawaii.

9. As a direct and proximate result of the negligence of Defendant Dela Cruz, Plaintiff Sandra Toma sustained injuries to her neck, shoulders and back, arms, pelvis and legs, other parts of her body, suffered from a major depressive disorder and Post Traumatic Stress Disorder and was otherwise injured, has incurred medical and rehabilitative expenses, has suffered mental and emotional distress and has lost income and earning capacity, entitling Plaintiff Toma to a judgment against Defendants.

10. As a direct and proximate result of the negligence of Defendant Dela Cruz, Plaintiff K.J.M. sustained injuries to her arms, legs, hands other parts of her body, and was otherwise injured, has incurred medical and rehabilitative expenses, has suffered mental and emotional distress, entitling Plaintiff K.J.M. to a judgment against Defendants.

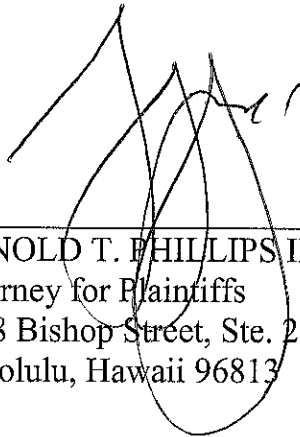
11. The Defendants' negligence is the legal cause of Plaintiffs' injuries and damages.

WHEREFORE, Plaintiffs pray for judgment in their favor against Defendants, jointly and severally, as follows:

1. Awarding general and compensatory damages under the FTCA against the United States in an amount to be proven at trial.

2. Such other and further relief as the Court deems just and proper under the circumstances.

DATED: Honolulu, Hawaii, October 25, 2017

A handwritten signature in black ink, appearing to read 'Arnold T. Phillips II', is written over a horizontal line. The signature is stylized with large, sweeping loops and a long horizontal stroke extending to the left.

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